

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT COURT OF NEW YORK

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JOHN GORMAN,

Plaintiff,

**Civil Case No.:** 1:14-cv-434

-against-

RENSSELAER COUNTY, ET. AL

Defendants.

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**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF ITS  
MOTION TO COMPELL DISCOVERY PURSUANT TO RULE 37  
(3)(b)(iv) OF THE FEDERAL RULES OF CIVIL PROCEDURE**

**STATEMENT OF FACTS**

This matter comes before the court by way of a motion to Compel Discovery pursuant to Rule 37 (3)(b)(iv) of the Federal Rules of Civil Procedure. On August 18, 2015 Plaintiff served its first Discovery Request on the Defendants. The Defendants response was due on September 18, 2015. The Defendants belated response to Plaintiffs First Discovery request was incomplete because the Defendants failed to provide any materials responsive to Requests 21, 22, and 23.

Additionally Defendants have yet to provide a copy of the disposition of the matter of the People v Patricelli which was also requested in Plaintiffs First Discovery Request.

On October 9, 2015 Plaintiff served its Second Document Request on the Defendants. The Defendants response was due on November 9, 2015. As of March 3, 2016 the Defendants still have not served any response to Plaintiffs Second Discovery Request.

### **POINT I**

#### **PLAINTIFFS MOTION SHOULD BE GRANTED BECAUSE DEFENDANTS HAVE RESPONDED TO PLAINTIFFS DISCOVERY REQUEST BY THE COURT ORDERED DEADLINE**

Rule 37 of the Federal Rules of Civil Procedure provides that “on notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery.” Rule 37 only requires that the motion include a certification that the movant has “in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action”.

Local Rule 7.1 (d) requires that the parties meet and confer before requesting a discovery conference. If after a discovery conference has been held and a party still has not responded to discovery a party must seek leave of court before filing a motion to compel.

As indicated in the attached attorney certification counsel has met and conferred with Defense counsel and at the discovery conference Magistrate Stewart ordered the Defendants to respond to all outstanding discovery requests within 30 days of the January 20<sup>th</sup> conference. Additionally the court ordered that if the Defendants failed to respond to Plaintiffs Discovery requests by the 30 day deadline the Plaintiff was free to make a motion to compel without leave of court.

We are now 12 days past the deadline the court set on January 20<sup>th</sup> and still the Defendants have failed to respond at all to Plaintiffs Second discovery request which was due in November of 2015. Moreover the Defendants have also failed to completely respond to Plaintiffs First Discovery request which was served in August.

This is not the typical case where a party has objected to discovery requests on the basis that it requests seeks privileged material or material that is not relevant to any parties claim or defense. Rather the Defendants have failed to provide any response to any of Plaintiffs Second Discovery requests and have provided an incomplete response to Plaintiffs First Discovery Request.

The lack of any discernable attempt to respond in any way to Plaintiffs Second Discovery Request, four months after it was due and under Court order, is indicia of either intentional delay or neglect. This unnecessary delay has caused unjustifiable harm to the Plaintiff in that it has hindered his ability to prosecute his case. Moreover it now appears possible that yet another extension to discovery may be required lest the court act with great dispatch in rendering an order to compel. It should be noted that the complaint in this matter was filed on March 14, 2014. We are approaching the two year anniversary of the complaint filing and discovery has not even been completed. This is an unacceptable state of affairs the Plaintiff now seeks to address with the Courts assistance.

Wherefore it is humbly requested that the court grant the Plaintiffs Rule 37 motion to compel discovery and to grant whatever other relief that the Court deems just and proper.

DATED: March 3, 2016

Respectfully submitted by,

By \_\_\_\_\_ S/\_\_\_\_\_  
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